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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,543	09/26/2002	Michel Zandian	41756/268947	6587
23370	7590	12/17/2004	EXAMINER	
JOHN S. PRATT, ESQ KILPATRICK STOCKTON, LLP 1100 PEACHTREE STREET ATLANTA, GA 30309			TOOR, SADAF A	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/031,543	ZANDIAN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Sadaf Toor	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☒ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.  | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Priority***

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Sweden on 12/19/2000. The priority document is not in the file. Examiner requests that another certified copy of the 0004710-0 application be submitted.

### ***Specification***

2. The disclosure is objected to because of the following informalities:
  - a. On page 6, line 2, "al" apparently should be changed to --all--.
  - b. On page 6, line 20, "loosing" apparently should be changed to --losing--.
  - c. On page 7, line 6, "where" apparently should be changed to --were--.
  - d. On page 7, line 15, "wen" apparently should be changed to --when--.

Appropriate correction is required.

### ***Claim Objections***

3. Claim 1 is objected to because of the following informalities:
  - a. --thereto-- should be inserted following "connected" on line 5.
  - b. --for-- should be inserted before "comparing" on line 7.
  - c. --for-- should be inserted before "providing" on line 10.

Appropriate correction is required.

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4. Claim 2 is objected to because of the following informalities: “is” should be changed to --are-- on line 2. Appropriate correction is required.
5. Claims 3 and 11 are objected to because of the following informalities: “preferred stored” should be changed to --stored preferred-- on line 1. Appropriate correction is required.
6. Claim 9 is objected to because of the following informalities: “thereto” should be inserted following --connected-- on line 7. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
9. Claim 1 recites the limitation “a processor, having a memory connected, controlling and recording” on line 5. It is unclear whether Applicant is intending to impose the limitation “controlling and recording” on the processor or on the memory. Claim 1 also recites the limitation “said sensor” on line 6. Since applicant recites “at least one sensor” on line 3, it is unclear whether Applicant intends to limit only one sensor or at least one sensor on line 6. Claim 1, lines 11-12 recite “adapting physical body activity.” It is unclear which of the feedback means, output signal, or user adapts the physical body activity.

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10. Claims 2, 3, 10, and 11 recite the limitation "said human being" in lines 3, 2, 3, and 2 respectively. There is insufficient antecedent basis for this limitation in the claim. Examiner suggests that Applicant replace "being" with --user-- to overcome this problem.

11. Claim 5 recites the limitation "said signals" in line 1. It is unclear if Applicant is intending to refer to the "input signals" (claim 1, line 5), the "output signals" (claim 1, line 10), or the "at least two signals (claim 4).

12. Claim 14 recites the limitation "said means" in line 1. There is insufficient antecedent basis for this limitation in the claim.

13. Claim 6 recites the limitation "said means" in line 1. Since more than one means were recited in claim 1 ("comparator means" on line 8 and "feedback means" on line 10), it is unclear which means Applicant is intending to refer to when reciting the limitation "said means" in claim 6.

14. Claim 9 recites the limitation "said sensor" on line 6. Since applicant recites "at least one sensor" on line 3, it is unclear whether Applicant intends to limit only one sensor or at least one sensor on line 6. Claim 9, lines 11-12 recite "adapting physical body activity." It is unclear whether the output signal or user adapts the physical body activity.

15. Claim 13 recites the limitation "said signals" in line 1. It is unclear if Applicant is intending to refer to the "input signals" (claim 9, line 6), the "output signals" (claim 9, line 10), or the "at least two signals (claim 12).

*Claim Rejections - 35 USC § 102*

15. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

16. Claims 1, 4-7, 9, and 12-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Adams ('950). Adams teaches a diet aid system which has a portable arrangement worn by a human user to monitor their daily food intake and their activity level. The Adams system includes sensors (sensors 5, 6) attached to a body part of a human user, a processor (CPU 2), having a memory (memory chip 3) connected, controlling and recording input signals from the sensors (sensors 5, 6), a comparator means (CPU 2) and a feedback means (display 8, alarm 9) for providing an output signal to the user.

Regarding claims 4 and 12, Adams teaches monitoring movements to correspond with amount of food intake in column 3, lines 15-21.

Regarding claims 5 and 13, column 2, line 65 teaches that alarm 9 may be an auditory or visual alarm.

Regarding claims 6-7 and 14-15, the Adams device (including sensors 5,6 and display 8) is carried in a housing (7).

Regarding claim 9, Adams teaches a calibration mode for collection reference data to be stored in memory (3) concerning the human user's eating and activity habits. This reference data is used as a comparison when acquiring new data. See column 2, lines 10-55.

17. Claims 1-3, 8-11, and 16 are rejected under 35 U.S.C. 102(a) as being anticipated by Lindqvist ('017). Lindqvist teaches a system for regulating the nutritional balance of a user, including monitoring the physical activity and food intake of the user. The device includes a portable arrangement including a sensor (3, see page 7, lines 18-21) attached to a body part of a human user, a processor (12), having a memory (13) connected, controlling and recording input signals from the sensor (3), a comparator means (12) and a feedback means (7) for providing an output signal to the user (see page 8, lines 6-15).

Regarding claims 3-4, page 5, lines 18-21 and page 9, lines 7-10 teach storing information related to body measures of the user.

Regarding claims 8 and 16, Lindqvist teaches monitoring pulse frequency, which differs between different activities. See page 9, lines 28-32.

### ***Conclusion***

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Thornton ('491) teaches a metabolic monitor for balancing energy intake (eating) with energy used (in work or exercise). Sagel ('351) teaches a body weight management system. Any inquiry concerning this communication or earlier communications from the examiner

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should be directed to Sadaf Toor whose telephone number is (571) 272-4734. The examiner can normally be reached on Monday - Friday, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sat  
12/7/04

  
**CHARLES MARMOR**  
**PRIMARY EXAMINER**